

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Implementation of Section 25 )  
of the Cable Television Consumer )  
Protection and Competition Act of 1992 )  
 )  
Direct Broadcast Satellite )  
Public Service Obligations )

MM Dkt. No. 93-25

COMMENTS OF THE  
NATIONAL ASSOCIATION OF BROADCASTERS

The Commission has issued a Notice of Proposed Rule Making<sup>1/</sup> seeking comment on proposals to implement certain provisions of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 ("The Cable Act"). Those provisions require the Commission to impose on providers of direct broadcast satellite service ("DBS") video programming obligations, including at a minimum political programming requirements, to adopt rules governing the reservation and availability of channels for noncommercial educational and informational programming at reasonable rates and to examine the opportunities DBS service can provide for local service.

<sup>1/</sup> Notice of Proposed Rule Making in MM Docket No. 93-25, 8 FCC Rcd 1589 (1993) ("Notice").

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The National Association of Broadcasters ("NAB")<sup>2/</sup> submits these comments on but a few points<sup>3/</sup> raised in the instant Notice.

I. DBS Cannot Provide Local Service.

The Commission has been charged by the Cable Act with examining

"the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under this Act [the Communications Act of 1934], and the methods by which such principles may be served through technological and other developments in, or regulation of, such service."<sup>4/</sup>

The Commission is interpreting this section as directing it to consider "whether a national mode of programming service such as DBS can accomplish the long standing goal of service to individual communities."<sup>5/</sup> NAB agrees with the

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<sup>2/</sup> NAB is a nonprofit, incorporated association which serves and represents America's radio and television broadcast stations and networks.

<sup>3/</sup> The Notice at ¶13 considers the definition of a "channel" for purposes of Section 25 of the Cable Act and the instant proceeding. Specifically, the question is raised whether, with the advent of digital compression technology, the term "channel" should be viewed as a specified segment of bandwidth, or as a single program service contained in a compressed signal. While NAB takes no position on the definition of a "channel" in this proceeding, we note that the Notice's discussion of channel here is solely in the context of "satellite channels" and transponders and new direct-to-home video service and thus that the Commission's determinations in this regard are applicable only to this issue and to this new service. Clearly, different policy considerations would apply to the definition of a digitally compressed cable channel as it relates to such issues as the channel capacity a cable system must devote to the carriage of local broadcast signals under the 1992 Cable Act.

<sup>4/</sup> Section 25(a) of the Cable Act.

<sup>5/</sup> Notice, *supra* at ¶31.

Commission that the principle of localism, as a bedrock concept of broadcasting in the public interest, invokes, necessarily, service to individual communities.<sup>6/</sup>

NAB also agrees with the Commission that DBS was originally conceived and considered as inherently a nonlocal service.<sup>7/</sup> NAB maintains that, by virtue of both technology and economics, it remains so today.

The concept of "localized" satellite service, were it feasible, would be for spot beams with small satellite footprints to reach individual communities. One practical guide to defining the size of individual communities is the Arbitron Television ADI Market Guide. A review of the ADIs which are used reveals that over half of the defined markets have areas of less than 10,000 square miles. For a circular coverage pattern, this corresponds to a diameter of approximately 113 miles. It would appear that, as a minimum, any DBS system would have to be able to produce spot beamwidths of less than 100 miles in diameter if it is to provide meaningful local coverage. Many of the defined ADIs cover areas of less than 5000 square miles,

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<sup>6/</sup> See Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 307(b).

The Commission has raised the issue of regional service, rather than that to individual communities, as potentially serving, to some extent, Congress' intention with regard to localism. Notice at ¶35. NAB maintains that "local" service cannot, semantically or by tradition usage, be equated with "regional" service.

<sup>7/</sup> As the first DBS applicant said in its application for authority to construct a DBS system: "DBS technology is not suitable for the provision of local service. From the standpoint of economic and spectrum efficiency, it is inconceivable that such a satellite service could or should be developed on a commercial basis for purely local use." Application of Satellite Television Corporation, General Docket No. 80-603, File No. DBS 81-01, at 54-55 (December 17, 1980).

which equates to a coverage diameter of less than 80 miles. Any DBS spot beam system that cannot provide individual, tailored service to geographic areas of this dimension cannot realistically be said to fulfill the needs of local service.

To provide 10,000 square mile coverage areas, a satellite would need a very expensive 24 foot dish and a large amount of amplifiers (because of the number of channels involved) and would therefore be quite complex and, probably, prohibitively expensive.<sup>8/</sup> But perhaps the most difficult obstacle to overcome, besides the enormous cost of a system with dozens of individual transponders, is the challenge of stabilizing the satellite to maintain quarter degree beamwidths. If this were even possible, it would undoubtedly be too expensive and so fuel intensive that it would substantially shorten the expected lifetime of the satellite.

Thus technology and economic service proposals have not converged to produce proposed satellite service to local areas. All the DBS applicants propose coverage of the full continental United States ("CONUS") or half-CONUS. Spot beams are simply not on the drawing boards of the DBS applicants or permittees.<sup>9/</sup>

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<sup>8/</sup> A 24 foot dish would be required at 12.5 GHz. For satellites in the 18-30 GHz band, the dish size would be smaller, but the cost of amplifiers and other components would rise for such a system. Conversely, this analysis demonstrates the futility of even considering the question of providing local radio service with a 2 GHz satellite system. Such a system would require a 120 foot antenna on the satellite!

<sup>9/</sup> Even the one company which has been advancing the use of spot beams in conjunction with satellite service describes theoretical coverage areas only as small as 200 miles in diameter (over 30,000 square miles) -- which would encompass Washington D.C., Baltimore and Richmond, as well as parts of seven states in one "local" market. Edward L. Taylor, Local-DBS: Putting HDTV on a Fast Track, 1992 HDTV World Conference Proceedings 241 (1992).

While such service might be considered regional service, NAB would assert that the local needs and interests of the populations in those areas vary greatly and considering

They are not part of current DBS service proposals because they make no economic sense, are not technically proven, and may not even be possible.

Thus, in response to the Commission's query, and in agreement with its view, NAB submits that it is not economically or technologically feasible for satellites to deliver programming to individual communities to accommodate local concerns.<sup>10/</sup>

## II. Application of the Political Broadcasting Requirements to DBS.

The Commission is charged by Section 25 of the Cable Act to apply sections 312(a)(7) and 315 to those providing video programming via direct broadcast satellite. NAB offers only brief comments in this regard.

In n. 21 of the Notice, the Commission proposes that if a DBS provider carries the programming of a terrestrial broadcast television station, it should be the station's responsibility to comply with the requirements of Sections 312(a)(7) and 315. NAB generally supports this proposal, so long as it is clear that the station's access

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them as one cannot fulfill the spirit or tradition of localism and "community" service embodied in the Communications Act and contemplated by Congress in Section 25.

<sup>10/</sup> Paragraph 35 of the Notice references a 1991 proceeding in which the Commission acknowledged that the technology existed, even then, to implement syndicated exclusivity rules which could be applied to the satellite retransmission of broadcast signals into local markets. Imposing Syndicated Exclusivity Requirements on Satellite delivery of Television Signals to Home Satellite Earth Station Receivers, 6 FCC Rcd 725 (1991). The Commission nevertheless refused to provide program exclusivity protection against satellite delivered distant signals on the grounds that providing such protection would not be economically feasible.

NAB, INTV and MPAA all filed extensive comments in the 1991 proceeding, General Docket No. 89-89, demonstrating how satellite syndex rules were both technically and economically feasible, and NAB continues to believe such rules should be adopted. At a minimum the Commission should revisit this issue taking into account technological advances that have been made since 1991.

obligations are not increased by DBS carriage. That is, the station should only be required to provide access to candidates to whom that would be required as a result of the station's over-the-air service.

In this regard, the FCC staff has informally stated that for a station to be required to provide access, it must put a principal service contour, defined as TV - Grade B, FM - 1 mVm, AM - 0.5 mVm, over more than a de minimis portion of the candidate's district.<sup>11/</sup> Thus, NAB would oppose the Commission's proposal in ¶24 of the Notice to the degree that it might be interpreted as imposing any out-of-service area access obligations upon a terrestrial station carried by a DBS provider. The broadcaster's obligation should be only to the community in which it is licensed to provide service, as is consistent with precedent.

Respectfully submitted,

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<sup>11/</sup> See NAB Political Broadcast Catechism (Thirteenth Ed. 1992), at 52, Q. 153; Letter to Richard Wingate from the Chief, Fairness/Political Programming Branch, (8330-B, C10-21, C10-65), October 8, 1987; Political Primer 1984, 100 FCC2d 1476, 1486, ¶25 (1984); Bob White, 87 FCC2d 748 (1980).



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